

FIRST REGULAR SESSION

# HOUSE BILL NO. 853

## 97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

2062H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To amend chapters 408 and 507, RSMo, by adding thereto ten new sections relating to consumer litigation loan transactions, with an emergency clause.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapters 408 and 507, RSMo, are amended by adding thereto ten new sections, to be known as sections 408.750, 408.755, 408.760, 408.765, 408.770, 408.775, 408.780, 408.785, 408.790, and 507.085, to read as follows:

**408.750. Sections 408.750 to 408.790 shall be known and may be cited as the “Missouri Consumer Litigation Loan Act”.**

**408.755. It is the intent of the legislature to regulate consumer litigation loans. Such loans meet a legitimate credit need for many consumers; however, to protect consumers from excessive charges and enhance transparency to the consumer and affected third parties, it is the intent of the legislature to put certain restrictions on lenders who make these loans.**

**408.760. The following words, terms, and definitions, when used in sections 408.750 to 408.790, shall have the meanings ascribed to them in this section, except where the text clearly indicates a different meaning:**

**(1) "Consumer", a natural person who:**

**(a) resides or is domiciled in Missouri; or**

**(b) is a party to a legal action pending before a state or federal court located in Missouri;**

**(2) "Consumer lawsuit loan", the provision of funds directly or indirectly to a consumer by a consumer lawsuit loan company in a consumer lawsuit loan transaction;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 10           (3) "Consumer lawsuit loan company", a person or entity that enters into a  
11 consumer lawsuit loan transaction with a consumer;
- 12           (a) The term consumer lawsuit loan company includes the following:
- 13           a. An affiliate or subsidiary of a consumer lawsuit loan company;
- 14           b. An entity or person who buys a whole or partial interest in a consumer lawsuit  
15 loan;
- 16           c. A person who acts as an agent to provide a consumer lawsuit loan from a third  
17 party for a fee;
- 18           d. A person who acts as an agent for a third party in providing a consumer lawsuit  
19 loan for a fee, regardless of whether approval or acceptance by the third party is necessary  
20 to create a legal obligation for the third party; and
- 21           e. Any other person or entity that is determined by the attorney general to be  
22 engaged in a transaction that is in substance:
- 23           (i) A disguised consumer lawsuit loan; or
- 24           (ii) A subterfuge for the purpose of avoiding this act.
- 25           (b) The term consumer lawsuit loan company does not include an attorney who  
26 provides professional services or the advancement of litigation expenses to the consumer  
27 on a contingency basis in relation to the consumer's legal claim.
- 28           (4) "Consumer lawsuit loan contract", a written agreement between a consumer  
29 and a consumer lawsuit loan company providing for a consumer lawsuit loan transaction;
- 30           (5) "Consumer lawsuit loan transaction", a transaction in which:
- 31           (a) A consumer lawsuit loan company provides a consumer lawsuit loan to a  
32 consumer; and
- 33           (b) The consumer assigns, conveys or otherwise confers, to the consumer lawsuit  
34 loan company the right to receive the proceeds, or part thereof, of the settlement, insurance  
35 payment, or award of damages obtained in the consumer's legal action, regardless of  
36 whether the right to receive the proceeds is non-recourse.
- 37           (6) "Legal action" means:
- 38           (a) A bona fide civil action or statutory or regulatory claim for which damages may  
39 be awarded to the claiming party;
- 40           (b) A cause of action or legal claim upon which a civil action or statutory claim  
41 described in subdivision (a) may be based;
- 42           (c) Any settlement or negotiations toward settlement of a civil action or regulatory  
43 proceeding described in paragraph (a) of subdivision (8); or

44           (d) Any agreement or negotiations toward an agreement under which a civil action  
45 or regulatory proceeding based upon a cause of action described in paragraph (b) of  
46 subdivision (8) would not be initiated.

47           (7) "Proceeds", the funds from a settlement, insurance payment, or award of  
48 damages obtained in the consumer's legal action.

**408.765. 1.** The maximum loan finance charge, inclusive of fees and costs to the  
2 consumer, for any consumer lawsuit loan transaction that may be charged, contracted for  
3 or received by a consumer lawsuit loan company may equal, but not exceed, the rate of  
4 interest applicable to transactions subject to section 408.030.

5           **2.** If a rate of interest greater than permitted by law is paid, the person paying the  
6 same, or his legal representative, may recover twice the amount of the interest thus paid,  
7 provided that the action is brought within five years from the time when said interest  
8 should have been paid. The person so adjudged to have received a greater rate of interest  
9 shall also be liable for the costs of the suit, including reasonable attorney's fees to be  
10 determined by the court.

11           **3. (1)** A lender may charge an origination fee that does not exceed fifty dollars on  
12 a consumer lawsuit loan.

13           **(2)** The origination fee may be charged only once in connection with a single  
14 consumer lawsuit loan to one borrower over any consecutive sixty-day period. When a  
15 consumer lawsuit loan is paid in full, an origination fee may be charged on any subsequent  
16 new consumer lawsuit loan without regard to the prior loan's consecutive sixty-day period.

17           **4.** Except for reasonable attorney's fees and costs awarded by a court, no other fees  
18 or charges may be assessed or collected on a consumer lawsuit loan.

**408.770. 1.** Each consumer lawsuit loan contract must be in writing, dated, and  
2 signed by the consumer and must include:

3           **(1)** A statement in type that is boldfaced, capitalized, underlined, or otherwise set  
4 out from surrounding written materials so as to be conspicuous, in immediate proximity  
5 to the space reserved for the signature of the buyer, as follows:

6 .....

7           **"You may cancel this contract at any time before midnight of the fifteenth day after**  
8 **the date of the transaction. See the attached notice of cancellation form for an explanation**  
9 **of this right."**

10 ..... ;

11           **(2)** The terms and conditions of payment, including the total of all payments to be  
12 made by the consumer, and annualized rate of interest; and

(3) The address of the lawsuit lender's principal place of business and the name and address of its agent in the state authorized to receive service of process.

2. The contract must include two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

.....

"Notice of Cancellation"

You may cancel this contract, without any penalty or obligation, within fifteen days after the date the contract is signed.

To cancel this contract, send by mail, or deliver in person, a signed and dated copy of this cancellation notice or other written notice to:

(Name of consumer lawsuit loan company) at (address) (place of business) not later than midnight (date).

I hereby cancel this transaction.

(date)

(purchaser's signature)"

.....

3. The consumer lawsuit loan company shall give to the consumer a copy of the completed contract and all other documents requiring the consumer's signature.

4. The breach by a consumer lawsuit loan company of a contract under this section, or of any obligation arising from a contract under this section, is a violation of this act.

5. Except as otherwise provided herein, the following agreements by a consumer are invalid with respect to consumer lawsuit loan transactions, or modifications thereof, to which this chapter applies:

(1) Agreements in which the consumer consents to the jurisdiction of another state; and

(2) Agreements that fix venue.

6. All consumer lawsuit loan transactions shall comply with federal Regulation Z of the Board of Governors of the Federal Reserve System. Failure to comply with Regulation Z is a violation of this act.

7. All consumer lawsuit loan transactions shall accurately reflect the actual terms, conditions, applicable fees, and repayment schedule agreed to by the parties. If a loan is to be repaid on demand, in a lump sum, or at undefined intervals, interest on the loan shall be computed by the actuarial or simple interest method when allocating payments made on the loan.

408.775. 1. A consumer lawsuit loan company shall not attempt to cause a consumer to waive a right under this act.

3           **2. Any waiver by a consumer of any part of this act is void.**

**408.780. 1. A consumer lawsuit loan company or a salesperson, agent, or**  
2 **representative of a consumer lawsuit loan company shall not enter into a consumer lawsuit**  
3 **loan transaction with a consumer unless the funds extended to the consumer under the**  
4 **terms of the consumer lawsuit loan transaction are used for that consumer's personal**  
5 **living expenses.**

6           **2. Regardless of the amount and fees involved in a consumer lawsuit loan**  
7 **transaction, the company shall ensure that the consumer who is a party to that transaction**  
8 **is guaranteed a recovery of a minimum of twenty-five percent of the proceeds that are at**  
9 **issue in the consumer lawsuit loan transaction, exclusive of attorney's fees.**

10          **3. Practicing attorneys in this state are prohibited from having a direct or indirect**  
11 **interest in a consumer lawsuit loan company and from receiving referral fees or other**  
12 **forms of direct or indirect compensation from a consumer lawsuit loan company or a**  
13 **salesperson, agent, or representative of a consumer lawsuit loan company.**

14          **4. A consumer lawsuit loan company shall not:**

15           **(1) Directly or indirectly instigate or encourage litigation, by engaging or referring**  
16 **consumers who have entered into a consumer lawsuit loan transaction with that consumer**  
17 **lawsuit loan company; and**

18           **(2) Control, directly or indirectly, or participate in the conduct of, the legal action**  
19 **that is related to a consumer lawsuit loan transaction.**

**408.785. 1. Violation of any provision of this act shall be construed to be an**  
2 **unlawful act under section 407.030, subject to the remedies contained in this chapter.**

3           **2. The remedies and rights provided under this act are in addition to, and do not**  
4 **preclude, any remedy otherwise available under law to a consumer claiming relief under**  
5 **any provision of law, including any award for general, consequential, or punitive damages.**

**408.790. The provisions of this act are hereby declared to be severable. If any**  
2 **provision of this act or the application of such provisions to any person or circumstances**  
3 **is declared invalid for any reason, such declaration shall not affect the validity of the**  
4 **remaining portions of this act.**

**507.085. In any civil action or part of a civil action pending before any division of**  
2 **any court of this state, a party shall disclose to the court and opposing party the existence**  
3 **and contents of any consumer lawsuit loan transaction as defined in subdivision (5) of**  
4 **section 408.760 under which any or all of a judgment, settlement, or other proceeds of the**  
5 **subject action are to be used to satisfy part or all of an obligation under the consumer**  
6 **lawsuit loan transaction. A party may, through interrogatories, deposition, and a request**  
7 **for documents and tangible things, discover facts related to a consumer lawsuit loan**

8 **transaction that are related to the actual or potential judgment, settlement, or other**  
9 **proceeds of the subject action.**

Section B. Because immediate action is necessary to provide consumer protection, this  
2 act is deemed necessary for the immediate preservation of the public health, welfare, peace, and  
3 safety, and is hereby declared to be an emergency act within the meaning of the constitution, and  
4 this act shall be in full force and effect upon its passage and approval.

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